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From: <Betsy_Herrmann@fws.gov>
To: <waynehedberg@utah.gov>, <joehefrich@utah.gov>
Date: 1/24/2007 11:33:42 AM
Subject: Bear Canyon sec7 consultation letter

Wayne and Joe-
Here's a copy of the consultation letter that was sent to OSM on Jan. 22.

(See attached file: bearCanyon_sec7_22jan2007.pdf)

MMMMMMMMMMMMMMMM
Betsy Herrmann
Fish and Wildlife Service
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United States Department of the Interior
FISH AND WILDLIFE SERVICE

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In Reply Refer To

FWS/R6
ES/UT
7-F-0062
6-UT-07-F-009

January 22, 2007

Memorandum

To: Carl Johnston, Natural Resource Specialist, Office of Surface Mining, Denver, Colorado

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, West Valley City, Utah

Subject: Formal Section 7 Consultation for Co-Op Mining Company, Bear Canyon Mine, Utah State Permit C/015/0025

We received your letter of December 7, 2006, requesting concurrence that a net annual depletion of 68.72 acre-feet of water from the Price River drainage associated with the expansion of coal mining operations may affect / likely to adversely affect the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*); humpback chub (*Gila cypha*); bonytail (*Gila elegans*); and razorback sucker (*Xyrauchen texanus*).

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Interagency Cooperation Regulations (50 CFR 402), this document transmits the Fish and Wildlife Service's (Service) biological opinion for these four fish species.

Because water depletions from the Upper Colorado River Basin are a major factor in the decline of the endangered fishes (Colorado pikeminnow, bonytail, humpback chub, and razorback sucker), the Service determined that any depletion will jeopardize their continued existence and will likely contribute to the destruction or adverse modification of their critical habitat (USDI, Fish and Wildlife Service, Region 6 Memorandum, dated July 8, 1997). To address depletion issues, the Department of the Interior; the states of Wyoming, Colorado and Utah; and the Western Area Power Administration established the Recovery Implementation Program for Endangered Fish Species in 1988. The Recovery Program acts as the reasonable and prudent alternative to avoid jeopardy to the endangered fishes by depletions from the Upper Colorado River Basin.

In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (Plan) which identifies actions currently believed to be required to recover the endangered fishes in the most expeditious manner.

Included in the Recovery Program was the requirement that a depletion fee would be paid to help support the Recovery Program. On July 8, 1997, the Service issued an intra-Service biological opinion determining that the depletion fee for average annual depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered fishes and to avoid destruction or adverse modification of their critical habitat by depletions of 100 acre-feet or less. The average annual water depletion for this project is estimated to be 68.72 acre-feet. Therefore, the depletion fee for this project is waived.

In response to concerns regarding potential impacts to golden eagle nests located within the zone of subsidence risk, a commitment has been made by the Co-op Mine, with the assistance of participating agencies (including UDOGM, OSM, BLM, FS, UDWR, and FWS) to develop and implement a raptor Mitigation Plan. This plan will provide guidance and specific measures such that impacts to golden eagles will be avoided and minimized to the extent possible. We look forward to working with you and the other participating agencies toward the completion and implementation of this plan.

In addition to the federally listed species, three conservation agreement species (flannelmouth sucker (*Catostomus latipinnis*); bluehead sucker (*Catostomus discobolus*); and roundtail chub (*Gila robusta*)) occur in the Price River and other tributaries to the Green River. We encourage OSM and the participating agencies to work with the Utah Division of Wildlife Resources to minimize impacts to native fish populations in the Price River and assist in the conservation of these species and their habitat throughout their range.

We appreciate your commitment in conserving endangered species. If further assistance is needed or you have any questions, please contact Tom Chart, at (801) 975-3330 extension 144.

